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Title of Document Transmitted:	BRIEF OF APPELLANTS AND AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT IN THE AMOUNT OF \$340.00 FOR BRIEF FEE.
Applicants:	Gregory J. Gagnon et al.
Serial No.:	09/726,368
Filed:	November 29, 2000
Group Art Unit:	3625
Title:	PAY TV BILLING, SYSTEM ACTIVATION, AND E-COMMERCE USING A PAY-TV RECEIVER
Our Ref. No.:	PD-990271

Please charge all fees to Deposit Account No. 50-0494 of Gates & Cooper LLP.

By: 

Name: Jason S. Feldmar
Reg. No.: 39,187

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Confirmation No.: 5293
Due Date: October 18, 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Gregory J. Gagnon et al.	Examiner:	Forest Thompson, Jr.
Serial No.:	09/726,368	Group Art Unit:	3625
Filed:	November 29, 2000	Docket:	PD-990271
Title:	PAY TV BILLING, SYSTEM ACTIVATION, AND E-COMMERCE USING A PAY-TV RECEIVER		

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MAIL STOP APPEAL BRIEF - PATENTS
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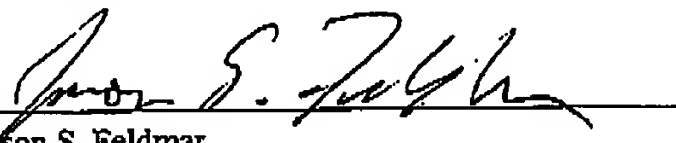
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- ☒ Brief of Appellant(s).
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GATES & COOPER LLP
Howard Hughes Center
6701 Center Drive West, Suite 1050
Los Angeles, CA 90045
(310) 641-8797

By: 
Name: Jason S. Feldmar
Reg. No.: 39,187
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MAIL STOP APPEAL BRIEF - PATENTS

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Howard Hughes Center
6701 Center Drive West, Suite 1050
Los Angeles, CA 90045
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By: 

Name: Jason S. Feldman
Reg. No.: 39,187
JSF/sjm

**RECEIVED
CENTRAL FAX CENTER****OCT 18 2004**Confirmation No.: 5293
Due Date: October 18, 2004**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:)	
)	
Inventors: Gregory J. Gagnon et al)	Examiner: Forest Thompson, Jr
)	
Serial #: 09/726,368)	Group Art Unit: 3625
)	
Filed: November 29, 2000)	Appeal No.: _____
)	
Title: PAY TV BILLING, SYSTEM)	
ACTIVATION, AND E-COMMERCE USING)	
<u>A PAY-TV RECEIVER</u>)	

BRIEF OF APPELLANTS**MAIL STOP APPEAL BRIEF - PATENTS**Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In accordance with 37 CFR §41.37, Appellants hereby submit the Appellants' Brief on Appeal from the final rejection in the above-identified application, as set forth in the Office Action dated May 18, 2004.

Please charge the amount of \$340 to cover the required fee for filing this Appeal Brief as set forth under 37 CFR §41.37(a)(2) and 37 CFR §41.20(b)(2) to Deposit Account No. 50-0494 of Gates & Cooper LLP. Also, please charge any additional fees or credit any overpayments to Deposit Account No. 50-0494.

I. REAL PARTY IN INTEREST

The real party in interest is Hughes Electronics Corporation, the assignee of the present application.

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II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences for the above-referenced patent application.

III. STATUS OF CLAIMS

Claims 1-5, 8-20, 23-35, and 38-52 remain in the Application.

Claim 1 was rejected under 35 U.S.C. §112, second paragraph, as being indefinite.

Claims 1-5, 8-20, 23-35, and 38-52 were rejected under 35 U.S.C. §102(e) as being anticipated by Nel (U.S. Patent No. 6,363,364).

Claims 46, 47, and 48 were rejected under 35 U.S.C. §103(a) as being unpatentable over Nel as applied to claims 1, 16, and 30, and further in view of Metz et al. (U.S. Patent No. 5,978,855).

Claim 51 was rejected under 35 U.S.C. §103(a) as being unpatentable over Nel as applied to claims 1, 16, and 30, and further in view of Koreeda et al., U.S. Patent No. 5,890,137 (Koreeda)

All of these rejections are being appealed.

IV. STATUS OF AMENDMENTS

Subsequent to the final rejection, Appellants submitted an amendment to claims 1, 12, 27, and 42. Pursuant to an Advisory Action mailed on August 20, 2004, the amendments were not entered.

However, the Advisory Action indicated that the proposed amendment to claim 1 would obviate the rejection upon approval for entry. Accordingly, Appellants resubmitted the amendments to claim 1 to obviate the rejection and place the application in better form for appeal.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claims 1, 16, 31 provide for the initialization of a subscription television service (see page 1, lines 3-4). As claimed, a receiver 400 is used to display a purchase screen 606 on a presentation device (e.g., a television) when the purchase screen 606 is activated by a user (see page 11, lines 14-19). The receiver 400 is also configured to receive and display broadcast signals on the

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presentation device (see page 8, lines 3-15). The user may then enter purchase information into the purchase screen 606 (see page 11, lines 20-29).

The claims further provide that the purchase information identifies an initial television subscription service for an initial activation of the receiver and a television programming package for the receiver (page 11, lines 8-29). The purchase information is then forwarded, through a secure connection, to a vendor (see page 13, lines 10-23). The vendor transmits a confirmation number and authorization for the initial activation back to the receiver 400 (see page 13, line 24 - page 14, line 17). In response, the receiver 400 allows/permits the display of the subscription television service (see page 14, lines 3-28).

Dependent claims 2, 17, and 32 further provide that the purchase screen is activated by a user through a remote control (see page 11, lines 8-19).

Dependent claims 3, 18, and 33 provides specific details regarding the purchase information. Namely, the purchase information comprises a type of credit card, a credit card number, and an expiration date (see Fig. 6, and page 11, lines 20-22).

Dependent claims 4, 19, and 34 provides for additional purchase information that consists of merchandise information for merchandise to be purchased from the vendor (see Fig. 6, and page 11, lines 23-29). In other words, in addition to activating an initial subscription service, the user can also purchase merchandise.

Dependent claims 5, 20, and 35 provide for further additional purchase information that consists of service information for a service to be purchased from a vendor (see Fig. 6, and page 11, lines 25-29).

Dependent claims 8, 23, and 38 depend on claims 5, 20, and 35 respectively and provide details regarding the interaction with the vendor. Specifically, the authorization for the service is received from the vendor in the receiver 400. Thereafter, the receiver 400 is allowed to display the authorized service (see page 13, line 24-page 14, line 9).

Dependent claims 9, 24, and 39 further provide for a verification that all required purchase information has been entered (see page 12, lines 4-9).

Dependent claims 10, 25, and 40 provide further details regarding the establishment of a secure connection set forth in the independent claims. Specifically, a dialtone is obtained through a

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modem connected to the receiver 400. Thereafter, a phone number (that is stored in the receiver 400) of the vendor is dialed. Once dialed, a secure connection is established with a computer system of the vendor at the phone number dialed. (See page 12, line 10-31).

Dependent claims 11, 26, and 41 provide for displaying on-screen messages that indicate actions being taken by the receiver 400 (see page 12, line 10-page 13, line 27).

Dependent claims 12, 27, and 42 further provide for storing the confirmation number into a purchase history screen in the receiver 400 that allows a customer to view the purchase information (see page 14, lines 18-28).

Dependent claims 13, 28, and 43 indicate that the vendor is a credit card company (see page 17).

Dependent claims 14, 29, and 44 provide that the receiver 400 is an integrated receiver/decoder (IRD) (see page 8, lines 3-6).

Dependent claims 15, 30, and 45 provide that the presentation device is a television (see page 10, line 28).

Dependent claims 46-48 provide that the receiver 400 performs each of the actions automatically without interacting with personnel from the vendor (see page 15, lines 2-9).

Independent claim 49 is similar to dependent claims 1, 16, and 31 but specifically provides for purchasing a good or service using a credit card (see page 11, lines 20-29).

Dependent claim 50 provides that the vendor receives the confirmation number from a credit card company once a credit card transaction using the credit card information has been processed (see page 14, lines 3-9).

Dependent claim 51 further specifies that the vendor is a credit card company that notifies a service provider of a credit card transaction and the good/service purchased so that the vendor can provide the good/service to the user (see page 14, lines 3-9).

Dependent claim 52 further provides that the good/service is an initial subscription and activation of a television programming package from a broadcaster television provider (page 11, lines 8-29).

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VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claim 1 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite.

Claims 1-5, 8-20, 23-35, and 38-52 stand rejected under 35 U.S.C. §102(e) as being anticipated by Nel (U.S. Patent No. 6,363,364).

Claims 46, 47, and 48 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Nel as applied to claims 1, 16, and 30, and further in view of Metz et al. (U.S. Patent No. 5,978,855).

Claim 51 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Nel as applied to claims 1, 16, and 30, and further in view of Koreeda et al., U.S. Patent No. 5,890,137 (Koreeda).

VIII. ARGUMENT

A. The 35 U.S.C. §112 Rejection has Been Obviated

Appellants submitted an amendment under 37 CFR 1.116 and 41.33(a) to obviate the rejection of claim 1 pursuant to the comments set forth in the Advisory Action mailed on August 20, 2004. Accordingly, Appellants submit the rejection has been overcome and is now moot.

B. Claims 1, 2, 5, 8, 10, 11, 14-16, 17, 20, 23, 25, 26, 29-31, 32, 35, 38, 40, 41, 44, 45, 51, and 52 are Patentable Over the Cited Art

The final Office Action rejects claims 1-5, 8-20, 23-35, and 38-52 under 35 U.S.C. §102(e) as being anticipated by Nel, U.S. Patent No. 6,363,364 (Nel).

Specifically, independent claims 1, 16, and 31 were rejected as follows:

Claims 1, 16, 31: Nel teaches:
activating, in a receiver connected to a presentation device, a purchase screen having at least one field (col. 2 line 66 — col. 4 line 23);
receive broadcast signals through an input mechanism (col. 3 lines 3-11); and enable the presentation device to display the broadcast signals (col. 3 lines 3-
the activation enabling the purchase screen to be displayed on the presentation device (col. 2 line 66 — col. 4 line 23);
receiving purchase information in the at least one field into the receiver from a user (col. 4 lines 16-23);
establishing a secure electronic connection, using a communication mechanism of the receiver that is different from the input mechanism, with a vendor (col. 3 lines 41-57);
electronically transmitting the purchase information from the receiver through the secure electronic connection to the vendor (col. 3 lines 41-51; col. 4 lines 4-15);
receiving a confirmation number from the vendor into the receiver (col. 3 lines 52-
receiving, in the receiver, authorization for the initial activation of the subscription television service from the vendor (col. 3 line 3 — col. 4 line 55); and
configuring the receiver to allow the display of the subscription television services (col. 3 line

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3 --col. 4 line 55).

wherein the purchase information identifies an initial television subscription service for an initial activation of the receiver and a television programming package for the receiver (col. 3 lines 41-51), as inferred by the teaching that *The system includes security mechanisms to ensure that only an authorized user can gain access to information relating to certain accounts. Such measures normally include account numbers and a personal identity number (PIN) transmitted from the instruments 20, 24 to the network 28 via network 22. Similarly, security measures are utilized to ensure that the requested data is only displayed on an authorized monitor 12. These measures may include an identification (ID) code number accompanying the data in the signal and which ID code enables only a designated decoder 14 to decode the encoded data in the signal. This teaching infers that users must have registered/subscribed through some means in order to use the invention as per the teaching that the security mechanisms restrict access to only users who are authorized, which encompasses applicants' claim language of an initial television subscription service for an initial activation.*

Appellants traverse the above rejections for one or more of the following reasons:

- (1) Nel fails to teach, disclose or suggest the initial activation of a subscription television service;
- (2) Nel fails to teach, disclose or suggest the automated initial activation of a subscription television service without interaction with vendor personnel;
- (3) Nel fails to teach, disclose or suggest the use of a credit card or conducting a credit card transaction; and
- (4) Nel fails to teach, disclose or suggest displaying a history of purchases.

The cited references do not teach nor suggest these various elements of Appellants' independent claims.

As previously stated, the independent claims provide for the initialization of a subscription television service. As claimed, a receiver is used to display a purchase screen on a presentation device (e.g., a television) when the purchase screen is activated by a user. The receiver is also configured to receive and display broadcast signals on the presentation device. The user may then enter purchase information into the purchase screen. The claims provide that the purchase information identifies an initial television subscription service for an initial activation of the receiver and a television programming package for the receiver. The purchase information is then forwarded, through a secure connection, to a vendor. The vendor transmits a confirmation number and authorization for the initial activation back to the receiver. In response, the receiver allows/permits the display of the subscription television service. All of these interactions are conducted automatically without direct interaction with a phone operator or physical person of the vendor (see dependent claims 46-48).

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The above limitations provide the unique ability to order goods/services through a purchase screen displayed on a television screen. The user merely enters the credit card information in the purchase screen and the good/service may be ordered. Further, the use of the credit card information provides substantial flexibility since most users have credit cards. Additionally, the user of a television subscription service (e.g., satellite television broadcasting service) may perform the initial activation of a service without communicating directly with the pay-TV service provider. Thus, the pay-TV personnel required to conduct such processing are not needed. Further, the pay-TV service provider does not need to "float" the money until the customer pays or cover expenses for non-payment of services by the customer.

Nel merely discloses and claims a system for and a method of performing interactive data exchange, for example as part of a financial transaction, between a user base and a remote network. The system includes a request data input device 20. A telephone network 22 is connected to the device for transmitting the request data to the network 28. At the user base there is also provided a receiver for receiving response signals from the network and which signals include encoded response data. A signal decoder 14 is provided at the user base to decode the response data. A display 12 displays the response data interactively with the request data. (See Abstract).

However, unlike the present claims, Nel fails to provide for receiving a confirmation number from the vendor into the receiver. In rejecting this claim element, the Office Action relies on col. 3, lines 52-57 of Nel. Col. 3, lines 52-57 provides:

The user may similarly instruct fund transfers between accounts to which he may have access at the financial institution and payment of certain other accounts of third parties. Confirmation of the selected instruction, data requested and account balances are visually displayed in real time on the monitor 12, as hereinbefore described.

However, the claims specifically provide for a "confirmation number". The plain language of the term clearly means a number. Such a "number" is not even remotely suggested by Nel. Instead, Nel merely provides for displaying a confirmation of the selected instruction. Such a confirmation could merely be a message that provides "Fund Transfer Request Received". In fact, Appellants submit that such a text based message is more likely given that it is displayed on the screen for the user to view. In this regard, the mere display of a "number" (as claimed) on a screen without anything else would not provide much use to the user.

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In addition to the lack of a legal foundation, Nel does not teach, describe, suggest, or allude to the use of a number whatsoever. Without even mentioning such a confirmation number, Nel cannot possibly teach, encompass, or render obvious the confirmation number that is specifically claimed. Further, under MPEP §2142 and 2143.03 "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)." In this regard, the term "number" that is claimed cannot merely be bypassed and said to be encompassed within another reference that does not teach or suggest the use of any such numbers whatsoever.

Nel also fails to teach receiving, in a receiver, authorization for the initial activation of the subscription television service from the vendor. As stated in the background of the present invention, in the prior art, to activate a television subscription service, the customer must call the pay-TV service provider where a series of questions are answered and the customer selects a subscription package. Nel falls within the scope of this prior art. Specifically, there is no capability or description in Nel to perform the initial activation of a pay-TV service or a receiver unit. The claims, in providing this capability, provide significant advantages including the ability for automated activation without a direct communication between a customer and personnel from the pay-TV service.

While Nel does provide for a service such as a broadcast channel and item (e.g., movie or documentary program vendible from a broadcasting system) (see col. 6, lines 22-24), Nel fails to provide for the initial activation of a service. Nel completely fails to mention, describe, or suggest, implicitly or explicitly, the initial activation of a receiver or pay-TV service. In this regard, Nel may rely upon the already established relationship between a customer and a broadcaster to offer the additional broadcast channel item. The initial activation of receiver and a new service on the receiver is not even contemplated by Nel.

In response to these earlier arguments, the final Office Action refers to col. 3, lines 41-51 which provides:

The system includes security mechanisms to ensure that only an authorized user can gain access to information relating to certain accounts. Such measures normally include account numbers

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and a personal identity number (PIN) transmitted from the instruments 20, 24 to the network 28 via network 22. Similarly, security measures are utilized to ensure that the requested data is only displayed on an authorized monitor 12. These measures may include an identification (ID) code number accompanying the data in the signal and which ID code enables only a designated decoder 14 to decode the encoded data in the signal.

The Office Action then provides that this teaching infers that users have registered/subscribed through some means in order to use the invention as per the teaching that the security mechanisms restrict access to only users who are authorized, which encompasses Appellants' claim language of *an initial television subscription service for an initial activation*. (Emphasis added)

Appellants agree with the Examiner in that the teaching infers the users have registered/subscribed through some means. The present claims provide the specific method for the user to register/subscribe – i.e., purchase information is received from the user in the receiver, transmitted to the vendor, and authorization for the subscription is received back. What is clearly lacking from Nel (as admitted by the Office Action providing that users must have registered/subscribed through some means) is a description of such a subscription/registration process. As stated above, the initial activation in the prior art required a user to physically call a vendor or pay-tv provider. Nel merely falls within this prior art activation. The Office Action admits that Nel fails to describe this specifically claimed limitation when it states that Nel's teaching infers users must have subscribed. Again, Nel is directed towards an environment where users are already subscribed.

Col. 3, lines 41-51 (cited by the Examiner) merely reinforce such an interpretation. Specifically, the users must use instruments 20 and 24 to forward account numbers (which can only exist if a user is already subscribed) and PIN numbers to a network. Further, data sent to a decoder from a network may include an ID code number that enables only a designated decoder to decode encoded data in a signal. Such a teaching clearly illustrates that Nel's user is already subscribed and the receiver is not being initially activated as claimed with an initial television subscription service. Instead, Nel merely confirms that unauthorized users (e.g., that may not have subscribed) do not receive unauthorized data.

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C. Dependent Claims 3, 18, and 33 Are Patentable Over the Cited Art

These dependent claims provide that the purchase information comprises a type of credit card, a credit card number, and an expiration date. Appellants further note that the independent claims provide that such purchase information must be received into a purchase screen (from a user) that is displayed on a display device. Accordingly, these claims provide that a user must enter a type of credit card, a credit card number, and an expiration date into a purchase screen as part of the initial activation of the receiver and subscription service.

The above limitations provide the unique ability to order goods/services through a purchase screen displayed on a television screen. The user merely enters the credit card information in the purchase screen and the good/service may be ordered. Further, the use of the credit card information provides substantial flexibility since most users have credit cards. Additionally, the user of a television subscription service (e.g., satellite television broadcasting service) may perform the initial activation of a service without communicating directly with the pay-TV service provider. Thus, the pay-TV personnel required to conduct such processing are not needed. Further, the pay-TV service provider does not need to "float" the money until the customer pays or cover expenses for non-payment of services by the customer.

In rejecting these claims, the Office Action merely relies on the use of a smart card and provides that a smart card provides the functionality and characteristics of a credit card and additionally other desirable characteristics/capabilities (while citing col. 4, lines 59-col. 5, line 43). The Office Action continues and provides that such smart card use "encompasses purchase information comprising a type of credit card with a credit card number and an expiration data issued to a user by a financial institution for use by the user to make purchases or pay debts".

Firstly, a smart card may provide functionality that is similar to a credit card. However, the mere ability to perform similar functionality is not the appropriate standard. For example, both a car and a motorcycle may be used to transport a rider from one destination to another. However, a motorcycle does not even remotely render obvious an automobile with four wheels and an enclosed seating area (amongst other clear differences). A smart card cannot be compared to a credit card. Nel specifically provides that to use the smart card, a smart card reader would be required (see col. 5, lines 19-25).

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The dictionary defines a credit card as:

credit card

n : a card (usually plastic) that assures a seller that the person using it has a satisfactory credit rating and that the issuer will see to it that the seller receives payment for the merchandise delivered [syn: charge card, charge plate, bank card]

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Thus, a credit card utilizes a credit rating of a user and is issued by a bank. A smart card may be loaded with funds, does not relate to credit whatsoever, and may not be issued by a bank. In addition, the claims specifically provide for a "type of credit card", a "credit card number", and an "expiration date". Such specific language is not even remotely suggested, alluded to, or contemplated by a smart card whatsoever. In addition, Nel fails to describe such aspects of a credit card, implicitly or explicitly.

The Office Action attempts to assert that a smart card is a type of credit card. However, Appellants respectfully traverse such an assertion. A smart card is not a type of credit card.

Further, it is well known that if someone asks for a type of credit card, the credit card owner replies with MasterCard, Visa, American Express, Discover, etc. and not "Smart Card". Accordingly, it is completely without merit to attempt to assert that a smart card is a type of credit card as claimed.

In view of the above, Appellants submit that a smart card cannot be compared to the credit card and the specific features of the credit card that are set forth in the claims.

D. Dependent Claims 9, 24, and 39 Are Patentable Over the Cited Art

As described above, these dependent claims provide for verifying that all of the required information has been received. In rejecting these claims, the final Office Action merely recited col. 3, lines 52-57 which provides:

The user may similarly instruct fund transfers between accounts to which he may have access at the financial institution and payment of certain other accounts of third parties. Confirmation of the selected instruction, data requested and account balances are visually displayed in real time on the monitor 12, as hereinbefore described.

Such language (and the remainder of Nel) does not even remotely indicate any verification, confirmation, or validation of whether too little or all of the information that is required to complete a purchase has been received. Instead, this portion of Nel merely provides for confirmation that a

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selected instruction has been received, followed by a display of data requested and account balances. There is no indication if all of the information to complete a purchase (as claimed) is confirmed merely by confirming receipt of a single particular instruction. In this regard, Nel completely fails to teach the claimed limitations.

E. Dependent Claims 12, 27, and 42 Are Patentable Over the Cited Art

These dependent claims provide for storing the confirmation number into a purchase history screen in the receiver that allows a customer to view the purchase information. The Office Action admits that Nel fails to disclose such a purchase history screen. Instead, the rejection relies upon confirmation of a selected instruction and the ability to display data requested and account balances in real time. However, Appellants note that the ability to display data requested and account balances is not similar to, nor does it suggest, the storage of a confirmation number into a purchase history screen that a user may view to examine prior purchases. The purchase history screen is a useful option that provides flexibility and auditing capability to the user. The user may view all purchases made through the receiver. Further, the confirmation number and purchase info is stored on the receiver – something not even remotely suggested by Nel.

As stated in the prior Office Action response, the mere ability to view data immediately requested (and account balances) in real time (as provided in Nel) does not even remotely suggest the ability to view a purchase history screen that utilizes a confirmation number to view purchase information. A purchase history is not merely the immediate real time request that is made. Instead, the purchase history screen allows the user to view the “history” of purchases (multiple purchases or otherwise). Such information is clearly lacking from Nel.

The Office Action further asserts:

...the confirmation requires access to a database in order to visually display, e.g., account balances. This confirmation must access history information, i.e., data stored in a database, which encompasses applicants' claimed aspect.

Appellants respectfully disagree. The display of a confirmation of selected instructions and data requested and account balances in real time does not have to access history information. Nor does such information have to be stored in a database. Instead, such information may merely be transmitted back from the server to the receiver for display. The claims specifically provide that the

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purchase history screen is in the receiver. No such receiver side database or screen is even contemplated in Nel. Instead, Appellants submit that it is more likely that since it is displayed in real time and only reflects a confirmation of the latest request from the user, the confirmation, data requested, and account balances are likely merely received in RAM, displayed in real time to the user, and then removed/lost afterwards. Nel does not describe or suggest that the receiver stores the information so that a user can view multiple prior purchases.

F. Dependent Claims 13, 28, 43, and 50 Are Patentable Over the Cited Art

As set forth above, these claims provide that the vendor is a credit card company. Further, claim 50 provides that the confirmation number is received from a credit card company once a credit card transaction using the credit card information has been processed.

In rejecting these claims, the Office Action admits that Nel does not explicitly disclose the limitations. Instead, the Office Action refers to financial transactions that could include banking transactions such as balance requests, funds transfer transactions, electronic account payment transactions, and purchase transactions. The Office Action further continues and describes smart card transactions and the use of PINs. Eventually, the Office Action concludes by stating:

The above teaching encompasses a credit card account issued to a user by a financial institution for use by the user to make purchases or pay debts, and the user receiving confirmation indications and or identifiers of his transactions. Additionally, a smart card is taught by Nel in the above disclosure, which is a "type of credit card", as claimed by applicant. Therefore, the teaching encompasses applicant's claimed inventive aspect of a vendor is a credit card company.

Appellants respectfully disagree with and traverse such an assertion. Firstly, it appears that the Office Action may be relying on obviousness to teach these claims in view of Nel. However, the rejection is solely based on 35 U.S.C. §102. Therefore, such a rejection has not been asserted. Nonetheless, under either an obviousness or lack of novelty rejection, Nel fails to teach, disclose, or suggest, the invention as claimed. As set forth above, a smart card is not a type credit card as claimed. Further, there is no suggestion or indication that any of the financial institutions or funds transfer that Nel describes involve or provide credit card services.

In addition, Appellants reassert the arguments with respect to claims 3, 18, and 33 set forth above with respect to these claims.

Accordingly, Appellants respectfully request reversal of these rejections.

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G. Dependent Claims 46-48 Are Patentable Over the Cited Art

These dependent claims provide that the initial activation of the receiver with the initial television subscription package is automated without interacting with personnel from the vendor.

In rejecting these claims, the Office Action relies on Metz. However, Metz fails to teach such an initial activation of a receiver without interaction with vendor personnel. Similar to Nel, Metz also fails to describe the process for the initial activation of a receiver. Instead, Metz and Nel both rely on the prior activation of a receiver and then provide for subsequent services. The claims are clearly distinguishable from such a teaching. Further, there are significant advantages to such initial activation without personnel interaction (as stated above). In fact, such non-personnel based initial activation is not even contemplated or recognized in either Nel or Metz.

H. Independent claim 49 Is Patentable Over the Cited Art

As described above, independent claim 49 is similar to dependent claims 1, 16, and 31 but specifically provides for purchasing a good or service using a credit card similar to claims 3, 13, 18, 28, 33, and 43. Accordingly, Appellants reassert the above arguments that addresses similar claim limitations herein.

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IX. CONCLUSION

In light of the above arguments, Appellant respectfully submit that the cited references do not anticipate nor render obvious the claimed invention. More specifically, Appellant's claims recite novel physical features which patentably distinguish over any and all references under 35 U.S.C. §§ 102 and 103. As a result, a decision by the Board of Patent Appeals and Interferences reversing the Examiner and directing allowance of the pending claims in the subject application is respectfully solicited.

Respectfully submitted,

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APPENDIX

1. (PREVIOUSLY PRESENTED) A method of initializing a subscription television service comprising:
 - activating, in a receiver connected to a presentation device, a purchase screen having at least one field, wherein the receiver is configured to:
 - receive broadcast signals through an input mechanism ; and
 - enable the presentation device to display the broadcast signals;
 - the activation enabling the purchase screen to be displayed on the presentation device;
 - receiving purchase information in the at least one field into the receiver from a user, wherein the purchase information identifies an initial television subscription service for an initial activation of the receiver and a television programming package for the receiver;
 - establishing a secure electronic connection, using a communication mechanism of the receiver that is different from the input mechanism, with a vendor;
 - electronically transmitting the purchase information from the receiver through the secure electronic connection to the vendor;
 - receiving a confirmation number from the vendor into the receiver;
 - receiving, in the receiver, authorization for the initial activation of the subscription television service from the vendor; and
 - configuring the receiver to allow the display of the subscription television services.
2. (PREVIOUSLY PRESENTED) The method of claim 1 wherein the activation of the purchase screen is received from a user using a remote control.
3. (PREVIOUSLY PRESENTED) The method of claim 1 wherein the purchase information further comprises:
 - a type of credit card;
 - a credit card number; and
 - an expiration date.

4. (PREVIOUSLY PRESENTED) The method of claim 1, further comprising receiving additional purchase information, wherein the additional purchase information comprises merchandise information for merchandise to be purchased from the vendor.

5. (PREVIOUSLY PRESENTED) The method of claim 1, further comprising receiving additional purchase information, wherein the additional purchase information comprises service information for a service to be purchased from the vendor.

6. (CANCELED)

7. (CANCELED)

8. (ORIGINAL) The method of claim 5 further comprising: receiving, in the receiver, authorization for the service from the vendor; and configuring the receiver to allow the display of the authorized services.

9. (ORIGINAL) The method of claim 1 further comprising verifying that all of the required purchase information has been received.

10. (ORIGINAL) The method of claim 1 wherein establishing a secure electronic connection comprises:

obtaining a dialtone through a modem connected to the receiver;
dialing a phone number corresponding to the vendor selected, wherein the phone number is stored in the receiver; and
establishing a secure connection with a computer system of the vendor at the phone number dialed.

11. (ORIGINAL) The method of claim 1 further comprising causing one or more onscreen messages to be displayed that indicate actions being taken by the receiver.

12. (ORIGINAL) The method of claim 1 further comprising storing the confirmation number into a purchase history screen in the receiver that allows a customer to view the purchase information.

13. (ORIGINAL) The method of claim 1 wherein the vendor is a credit card company.

14. (ORIGINAL) The method of claim 1 wherein the receiver is an integrated receiver/decoder (IRD).

15. (ORIGINAL) The method of claim 1 wherein the presentation device is a television.

16. (PREVIOUSLY PRESENTED) A system for initializing a subscription television service comprising:

a receiver configured to:

receive broadcast signals through an input mechanism

enable a presentation device to display the broadcast signals;

receive activation of a purchase screen having at least one field;

enable the purchase screen to be displayed on the presentation device;

receive purchase information in the at least one field from a user, wherein the purchase information identifies an initial television subscription service for an initial activation of the receiver and a television programming package for the receiver;

establish a secure electronic connection, using a communication mechanism that is different from the input mechanism, with a vendor;

electronically transmit the purchase information through the secure electronic connection to the vendor;

receive a confirmation number from the vendor;

receive authorization for the initial activation of the subscription television service from the vendor; and

configure the receiver to allow the display of the subscription television services.

17. (PREVIOUSLY PRESENTED) The system of claim 16 wherein the receiver is configured to receive the activation of the purchase screen from a user using a remote control.

18. (PREVIOUSLY PRESENTED) The system of claim 16 wherein the purchase information further comprises:

- a type of credit card;
- a credit card number; and
- an expiration date.

19. (PREVIOUSLY PRESENTED) The system of claim 16 wherein the receiver is configured to receive additional purchase information that comprises merchandise information for merchandise to be purchased from the vendor.

20. (PREVIOUSLY PRESENTED) The system of claim 16 wherein the receiver is configured to receive additional purchase information that comprises service information for a service to be purchased from the vendor.

21. (CANCELED)

22. (CANCELED)

23. (ORIGINAL) The system of claim 20, the receiver further configured to:
receive authorization for the service from the vendor; and
allow the display of the authorized services.

24. (ORIGINAL) The system of claim 16, the receiver further configured to verify that all of the required purchase information has been received.

25. (ORIGINAL) The system of claim 16 wherein the receiver is configured to establish a secure electronic connection by:

obtaining a dialtone through a modem connected to the receiver;

dialing a phone number corresponding to the vendor selected, wherein the phone number is stored in the receiver; and

establishing a secure connection with a computer system of the vendor at the phone number dialed.

26. (ORIGINAL) The system of claim 16, the receiver further configured to cause one or more onscreen messages to be displayed that indicate actions being taken by the receiver.

27. (ORIGINAL) The system of claim 16, the receiver further configured to store the confirmation number into a purchase history screen in the receiver that allows a customer to view the purchase information.

28. (ORIGINAL) The system of claim 16 wherein the vendor is a credit card company.

29. (ORIGINAL) The system of claim 16 wherein the receiver is an integrated receiver/decoder (IRD).

30. (ORIGINAL) The system of claim 16 wherein the presentation device is a television.

31. (PREVIOUSLY PRESENTED) An article of manufacture for initializing a subscription television service comprising:

means for a receiver connected to a presentation device to receive broadcast signals through an input mechanism;

means for the receiver to enable the presentation device to display the broadcast signals;

means for the receiver to receive activation of a purchase screen having at least one field;

means for the activation to enable the purchase screen to be displayed on the presentation device;

means for the receiver to receive purchase information for the one or more fields from a user, wherein the purchase information identifies an initial television subscription service for an initial activation of the receiver and a television program package for the receiver;

means for the receiver to establish a secure electronic connection, using a communication mechanism that is different from the input mechanism, with a vendor;

means for the receiver to electronically transmit the purchase information through the secure electronic connection to the vendor;

means for the receiver to receive a confirmation number from the vendor;

means for receiving, in the receiver, authorization for the initial activation of the subscription television service from the vendor; and

means for configuring the receiver to allow the display of the subscription television services

32. (PREVIOUSLY PRESENTED) The article of manufacture of claim 31 wherein the activation of the purchase screen is received from a user using a remote control.

33. (PREVIOUSLY PRESENTED) The article of manufacture of claim 31 wherein the purchase information further comprises:

- a type of credit card;
- a credit card number; and
- an expiration date.

34. (PREVIOUSLY PRESENTED) The article of manufacture of claim 31, further comprising means for receiving additional purchase information, wherein the additional purchase information comprises merchandise information for merchandise to be purchased from the vendor.

35. (PREVIOUSLY PRESENTED) The article of manufacture of claim 31, further comprising means for receiving additional purchase information, wherein the additional purchase information comprises service information for a service to be purchased from the vendor.

36. (CANCELED)

37. (CANCELED)

38. (ORIGINAL) The article of manufacture of claim 35 further comprising:
means for the receiver to receive authorization for the service from the vendor; and
means for the receiver to allow the display of the authorized services.

39. (ORIGINAL) The article of manufacture of claim 31 further comprising means for
verifying that all of the required purchase information has been received.

40. (ORIGINAL) The article of manufacture of claim 31 wherein the means for the
receiver to establish a secure electronic connection comprises:
means for the receiver to obtain a dialtone through a modem connected to the receiver;
means for the receiver to dial a phone number corresponding to the vendor selected,
wherein the phone number is stored in the receiver; and
means for the receiver to establish a secure connection with a computer system of the
vendor at the phone number dialed.

41. (ORIGINAL) The article of manufacture of claim 31 further comprising means for
the receiver to cause one or more onscreen messages to be displayed that indicate actions being
taken by the receiver.

42. (ORIGINAL) The article of manufacture of claim 31 further comprising means for
the receiver to store the confirmation number into a purchase history screen in the receiver that
allows a customer to view the purchase information.

43. (ORIGINAL) The article of manufacture of claim 31 wherein the vendor is a credit
card company.

44. (ORIGINAL) The article of manufacture of claim 31 wherein the receiver is an integrated receiver/decoder (IRD).

45. (ORIGINAL) The article of manufacture of claim 31 wherein the presentation device is a television.

46. (PREVIOUSLY PRESENTED) The method of claim 1 wherein all of the steps are automated without interacting with personnel from the vendor.

47. (PREVIOUSLY PRESENTED) The system of claim 16 wherein the receiver is configured to perform the actions automatically without interacting with personnel from the vendor.

48. (PREVIOUSLY PRESENTED) The article of manufacture of claim 31 wherein all of the means automatically perform the indicated actions without interacting with personnel from the vendor.

49. (PREVIOUSLY PRESENTED) A method of making a purchase comprising:
activating, in a receiver connected to a presentation device, a purchase screen having at least one field, wherein the receiver is configured to:
receive broadcast signals through an input mechanism; and
enable the presentation device to display the broadcast signals;
the activation enabling the purchase screen to be displayed on the presentation device;
receiving purchase information in the at least one field into the receiver from a user, wherein the purchase information comprises credit card information and a good or service;
establishing a secure electronic connection, using a communication mechanism of the receiver that is different from the input mechanism, with a vendor;
electronically transmitting the purchase information from the receiver through the secure electronic connection to the vendor;
receiving a confirmation number from the vendor into the receiver.

50. (PREVIOUSLY PRESENTED) The method of claim 49 wherein the vendor receives the confirmation number from a credit card company once a credit card transaction using the credit card information has been processed.

51. (PREVIOUSLY PRESENTED) The method of claim 49 wherein:
the vendor is a credit card company; and
the vendor notifies a service provider of a credit card transaction and the good or service purchased to provide the good or service to the user.

52. (PREVIOUSLY PRESENTED) The method of claim 49 wherein the good or service comprises an initial subscription and activation of a television programming package from a broadcasting television provider.